

Filed
08 May 20 P5:12
Gary Fitzsimmons
District Clerk
Dallas District

CAUSE NO. 08-05993

CNA HOLDINGS, INC. AND
CELANESE AMERICAS
CORPORATION,

Plaintiffs,

v.

KAYE SCHOLER LLP AND ROBERT
B. BERNSTEIN,

Defendants.

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

E-101st JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE DISTRICT COURT JUDGE:

Plaintiffs CNA Holdings, Inc. and Celanese Americas Corporation (collectively, "Celanese"), file this Original Petition complaining of defendants Kaye Scholer LLP and Robert B. Bernstein (collectively, "defendants"), and respectfully show the Court as follows:

I.

DISCOVERY

1. Celanese intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.3 because of the complex nature of the lawsuit.

II.

PARTIES

2. Plaintiff CNA HOLDNGS, INC. ("CNA") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Texas.

3. Plaintiff CELANESE AMERICAS CORPORATION ("Celanese Americas") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Texas. (CNA and Celanese Americas are referred to collectively

as "Celanese")

4. Defendant KAYE SCHOLER LLP ("Kaye Scholer") is a limited liability partnership engaged in the practice of law in the State of Texas and the State of New York. Kaye Scholer can be served with process at its usual place of business, 425 Park Avenue, New York, New York 10022-3598.

5. Defendant ROBERT B. BERNSTEIN ("Bernstein") is a non-resident of Texas who served as special counsel to Kaye Scholer at all relevant times. Bernstein can be served with process at his home address, 48 Old Colony Road, Hartsdale, New York 10530. Alternatively, Bernstein may be served with process at his usual place of business, 110 East 42nd Street, Suite 1502, New York, New York 10017.

III.

JURISDICTION

6. This Court has jurisdiction over this action because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

7. This Court has jurisdiction over Kaye Scholer, a non-resident of Texas, because Kaye Scholer purposefully has availed itself of the privileges and benefits of conducting business in the State of Texas by, among other things, engaging in business in Texas and contracting with one or more Texas residents.

8. This Court has jurisdiction over Bernstein, a non-resident of Texas, because Bernstein purposefully has availed himself of the privileges and benefits of conducting business in the State of Texas by, among other things, engaging in business in Texas and contracting with one or more Texas residents.

IV.
VENUE

9. Venue for this case is proper in Dallas County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1), because all or a substantial part of the events or omissions giving rise to the claims occurred in Dallas County.

10. Venue for this case is also proper in Dallas County, Texas, pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(4), because, upon information and belief, Kaye Scholer does not maintain a principal office in Texas, Bernstein does not reside in Texas, and CNA and Celanese Americas resided in Dallas County at the time the causes of action asserted in this lawsuit accrued.

V.
FACTS

11. In September 2002, Celanese retained Defendants to provide legal representation in connection with, among other things, civil antitrust litigation arising from a Department of Justice ("DOJ") grand jury investigation of criminal violations of the federal antitrust laws by United States-based manufacturers of polyester staple fiber ("PSF") (the "Antitrust Matter").

12. On March 7, 2003, CMI Industries ("CMI"), an alleged purchaser of PSF, commenced an action against Celanese in the United States District Court for the Western District of North Carolina, Charlotte Division. Six additional actions were filed against Celanese by more than 22 alleged purchasers of PSF.¹ All seven actions were consolidated into a Multi-

¹ The seven actions currently pending against Celanese are *Avondale Mills, Inc. v. Nan Ya Plastics Corporation et al*, Civ. 3:03-CV-296; *CMI Industries, Inc. v. E.I. DuPont de Nemours & Co. et al*, Civ. 3:03-CV-283; *Coats American, Inc. d/b/a Coats North America v. Wellman Inc. et al*, Civ. 3:04-CV-506; *Hampton Capital Partners, LLC. d/b/a Gulistan Carpet, as successor in interest by merger to Gulistan Carpet Inc. v. E.I. DuPont de Nemours & Co. et al*, Civ. 3:03-CV-281; *Mount Vernon Mills, Inc. v. Wellman Inc. et al*, Civ. 3:04-CV-197; *Parkdale Mills, Inc. et al v. CNA Holdings, Inc. et al*, Civ. 3:06-CV-390; and *Burlington Industries, LLC et al v. CNA Holdings, Inc. et al*, Civ. 3:06-CV-387.

District Litigation court and are currently pending in the Charlotte Division of the United States District Court for the Western District of North Carolina, and constitute part of the Antitrust Matter.

13. Celanese seeks damages resulting from Defendants' legal malpractice, negligence and breach of fiduciary duties in connection with their representation in the Antitrust Matter.

VI.

STATEMENT OF CLAIMS

COUNT ONE

Professional Malpractice

14. All of the allegations contained in the previous paragraphs are realleged herein.

15. As attorneys representing Celanese in connection with the Antitrust Matter, Defendants owed Celanese a duty to act in accordance with the standards of care ordinarily provided by professionals providing legal representation.

16. Defendants breached the duty they owed to Celanese in connection with their representation in the Antitrust Matter.

17. As a result of Defendants' actions, Celanese has suffered substantial damages.

COUNT TWO

Negligence

18. All of the allegations contained in the previous paragraphs are realleged herein.

19. As attorneys representing Celanese in connection with the Antitrust Matter, Defendants owed Celanese a duty to act in accordance with the standards of care ordinarily provided by professionals providing legal representation. Defendants breached the duty they owed to Celanese in connection with their representation of Celanese in the Antitrust Matter.

20. As a result of Defendants' actions, Celanese has suffered substantial damages.

COUNT THREE

Breach of Fiduciary Duty

21. All of the allegations contained in the previous paragraphs are realleged herein.

22. As counsel representing Celanese during the Polyester Staple Litigation, Defendants owed a fiduciary duty to Celanese to act in accordance with the standards of care ordinarily provided by professionals when providing legal representation.

23. Defendants owed Celanese a fiduciary duty not to neglect the legal matter entrusted to Defendants and not to obstruct improperly the discovery process in the Antitrust Matter.

24. As a result of Defendants' action, Defendants breached their fiduciary duty to Celanese.

25. As a result of Defendants' breach of their fiduciary duties, Celanese has suffered substantial damages.

VII.

JURY DEMAND

26. Celanese demands a jury trial and tenders the appropriate fee with this Petition.

VIII.

PRAYER

Wherefore, Plaintiffs CNA Holdings, Inc. and Celanese Americas Corporation pray that the Court: (i) award Celanese damages in an amount in excess of the minimum jurisdiction of the Court for Defendants' professional malpractice, negligence and breach of fiduciary duties;

(ii) award Celanese a disgorgement of the attorneys' fees it paid to Defendants for representation in the Antitrust Matter; (iii) award Celanese pre-judgment and post-judgment interest; (iv) tax the costs of the suit and proceedings against Defendants; and (v) award Celanese such other and further relief to which it is entitled at law or in equity.

Respectfully submitted,

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: 

Paul J. Zoeller

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AMERICAS CORPORATION

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§ Case Type:**PROFESSIONAL LIABILITY**
 § Subtype:**LEGAL**
 § Date Filed:**05/29/2008**
 § Location:**101st District Court**
 §

Party Information

		Lead Attorneys
DEFENDANT	BERNSTEIN, ROBERT B	
DEFENDANT	KAYE SCHOLER LLP	
PLAINTIFF	CELANESE AMERICAS CORPORATION	ZOELLER, PAUL <i>Retained</i>
PLAINTIFF	CNA HOLDINGS INC	ZOELLER, PAUL <i>Retained</i>

Events & Orders of the Court

	OTHER EVENTS AND HEARINGS
05/29/2008	JURY DEMAND (OCA) Vol./Book J24, Page 367, 1 pages
05/29/2008	ORIGINAL PETITION (OCA)

Financial Information

	PLAINTIFF CNA HOLDINGS INC		
	Total Financial Assessment		252.00
	Total Payments and Credits		252.00
	Balance Due as of 06/18/2008		0.00
05/30/2008	Transaction Assessment		222.00
05/29/2008	Transaction Assessment		30.00
06/03/2008	PAYMENT (CASE FEES)	Receipt # 33472-2008-DCLK THOMAS P LUDWIG	(252.00)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**CNA HOLDINGS, INC. AND
CELANESE AMERICAS
CORPORATION,**

Plaintiffs,

V.

KAYE SCHOLER LLP AND
ROBERT B. BERNSTEIN,

Defendants.

[illegible]

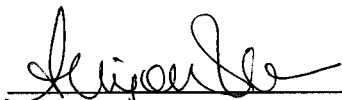
CIVIL ACTION NO. _____

DEFENDANT'S CERTIFICATE OF INTERESTED PERSONS

Defendant Kaye Scholer and Robert B. Bernstein file this Certificate of Interested Persons in accordance with LOCAL RULE 7.4. The following persons or entities have a financial interested in the outcome of this case:

1. CNA Holdings, Inc., Plaintiff.
2. Celanese Americas Corporation, Plaintiff.
3. Kaye Scholer LLP, Defendant.
4. Robert B. Bernstein, Defendant.

Respectfully submitted,



George M. Kryder

State Bar No. 11742900

Carol C. Payne

State Bar No. 00788865

VINSON & ELKINS L.L.P.

3700 Trammell Crow Center

2001 Ross Avenue

Dallas, Texas 75201-2975

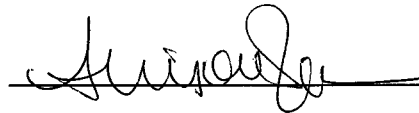
Telephone: (214) 220-7700

Fax: (214) 220-7716

Attorneys for Defendant Kaye Scholer LLP

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument was served upon counsel of record on this 19th day of June, 2008, in accordance with the Federal Rules of Civil Procedure.



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